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Date: February 16, 2012

To: Mayor and City Council Members

From: Patrick W. Baker, Durham City Attorney

Subject: Utility Extension Agreement with Southern Durham Development, Inc. to serve 751 Assemblage

Executive Summary

Southern Durham Development, Inc. (“Southern Durham”) proposes to extend City water and sewer to serve 751 Assemblage (“Project”), a mixed use development with approximately 300,000 square feet of office space, 300,000 square feet of retail, 1,300 residential units, and up to 150,000 square feet of civic floor area, located west of the Fayetteville Road and NC 751 intersection.

Since the Project is outside Durham City limits, City water and sewer will only be provided by the City to the Project if the City and Southern Durham execute a utility extension agreement. Southern Durham’s proposed utility extension agreement (“UEA”) is attached to this memorandum. This UEA would provide water to the Project by extending the existing waterline in Fayetteville Road to connect it to the existing waterline in NC 751 and extension of waterlines into the site. In addition, pursuant to the proposed UEA sewer service would be provided to the Project by on-site public and private pump stations, sewer extension on NC 751 to connect to existing sewer on NC 751, and upgrades to the existing Stage Coach Pump Station.

City Council heard reports from City staff on a variety of issues related to the Project at a Special City Council Meeting that was held in Durham City Hall on June 27, 2011 and again at a follow up Special City Council meeting on August 18, 2011. During these meetings, Council received reports from staff and discussed the following issues including: the status of the UEA; legal concerns related to the creation of vested rights; the cost/benefit analyses for a variety of annexation scenarios; NC 751 traffic concerns; transit concerns; stormwater concerns with respect to compliance with the Jordan Lake Rules; and the ongoing litigation between neighbors of the Project and Durham County and Southern Durham (*Chancellor’s Ridge Homeowners Association et. al. v. Durham County et. al.*, Durham County Superior Court, 10 CVS 5868 (“County Lawsuit”)). At the conclusion of the August

18 meeting, Council voted unanimously “that the City take no action on the utility extension agreement for 751 South until all pending legal action . . . on this project has been resolved . . .”

Durham County’s and Southern Durham’s motions for summary judgment in the County Lawsuit were granted on January 13, 2012. On or about January 22, 2012, Plaintiffs in the County Lawsuit filed notice of appeal of the Superior Court ruling. Thus, the County Lawsuit is still pending.

By letter dated January 24, 2012, Attorney J. Calvin Cunningham on behalf of his client Southern Durham, requested that the pending UEA be calendared and voted upon by the City Council “at the next available session of the City Council” After consultation with the City Attorney during a closed session briefing on Mr. Cunningham’s request, the Council directed the City Attorney to calendar the consideration of the pending UEA for the February 20, 2012 City Council Meeting. Accordingly, the UEA is now before Council for consideration. Attached to this memo is a copy of the pending UEA.

Recommendation

It is recommended that the City Council receive this report. Should Council desire to take a vote on the pending UEA, the following Motion would be in order:

“To authorize the City Manager to execute the attached Utility Extension Agreement between Southern Durham Development, Inc. and the City of Durham for the 751 Assemblage.”